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January 6, 1993

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OUR FILE NO.  
0200-130-63

Ms. Donna R. Searcy, Secretary  
Federal Communications Commission  
Washington, D.C. 20554

Re: MM Docket No. 92-295  
RM-8016

Dear Ms. Searcy:

On behalf of TV 14, Inc., licensee of WTLK-TV, Rome-Atlanta, Georgia, I transmit herewith, for filing and distribution to the Commissioners, an original and nine copies of its Comments on Notice of Proposed Rule Making in the above-referenced proceeding.

Kindly communicate any questions concerning this matter directly to this office.

Very truly yours,

*Michael H. Bader/JS*

Michael H. Bader

MHB/app

Enclosures

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Before The  
**Federal Communications Commission**  
Washington, D.C. 20554

In The Matter Of )  
 )  
Request by TV 14, Inc., ) MM Docket No. 92-295  
to Amend Section 76.51 of the ) RM-8016  
Commission's Rules to Include )  
Rome, Georgia, in the Atlanta, )  
Georgia, Television Market )

TO: The Commission, *en banc*

COMMENTS OF TV 14, INC.  
(WTLK-TV--CHANNEL 14, (INDEPENDENT)  
ROME, GEORGIA)  
ON NOTICE OF PROPOSED RULE MAKING

TV 14, Inc., by its attorneys, submits these comments on the *Notice of Proposed Rule Making* in the above-described matter released on December 8, 1992.<sup>1</sup>

The Commission has correctly perceived a need for expedited consideration of the redesignation of the Atlanta-Rome market to include Rome as a community specified in FCC Rule 76.51. TV 14, Inc. has demonstrated that, without such prompt action, its continued existence as a UHF independent station serving the Rome market is imperiled. Based on the record developed in the Petition for Rule Making which WTLK-TV filed, as well as prior proceedings concerning related issues, the Commission should finalize the proposed change at the earliest possible time.

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<sup>1</sup> TV 14, Inc. is the licensee of UHF television station WTLK-TV in Rome, Georgia, and is the proponent of the rules change submitted for comment in the *Notice of Proposed Rule Making*.

There is strong public policy in favor of the proposed rule change. The Commission is committed to the preservation of competing television services, to the enhancement of opportunities for UHF television stations to operate, and to the expansion of the opportunities for parties to compete in the provision of television service. What is more, the Commission has been given added impetus by the passage of the Cable Act of 1992 to improve the positions of broadcasters in general in their relations with cable systems.<sup>2</sup>

WTLK-TV has shown to the Commission and to the public that, without strong support from the government, it is not likely to be carried on the Atlanta area cable systems. Despite the fact that the station has constructed an enormous, high-power operation with city-grade service over Atlanta, it is not being carried on the Atlanta cable systems, and without the rights a market redesignation would confer, its prospects for such carriage are dim.

One of the principal contributing factors to the inability of WTLK-TV to gain access to the Atlanta cable systems has been the severe copyright situation. Without designation of Rome as part of the Atlanta market, the cable systems take the position that they are required to remit copyright fees should they put Channel 14 on their cable systems. It is clear, and no party disagrees with this, that if the Commission's rules are amended so as to list Atlanta-Rome as the relevant market, copyright liability will disappear. Therefore, it is imperative that prompt

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<sup>2</sup> TV 14, Inc. notes that the FCC will address the overall question of the top 100 television markets in the context of implementing the 1992 Cable Act. NPRM, ¶ 3, n. 2. TV 14 urges the Commission to adhere to its initial conclusion that this proceeding should move forward immediately, rather than wait for that proceeding. *Id.* WTLK first brought its plight to the Commission more than two years ago. Since that time, a full record has been developed in this matter, and it is ripe for final adjudication.

relief be given and the way to do this is to declare the market to be what all authorities recognize it to be--Atlanta-Rome.

As the Commission observes in its *Notice of Proposed Rule Making*, Arbitron already lists the market as Atlanta-Rome. Rome is within the Atlanta area of dominant influence. The Atlanta stations are carried on the Rome cable system as well as their own home community cable systems. The reciprocal is not true--the Rome station is not carried on the Atlanta systems.

From time to time there are channels available for the carriage of Channel 14 on the Atlanta systems. Recently, one available channel was suddenly dedicated to "The Cartoon Channel," rather than the carriage of Channel 14. This somewhat odd preference for a program dealing with animated cartoons rather than local television service is typical of the treatment accorded competitive stations such as Channel 14 and will conclude that this would serve the public interest, but first they must have the added incentive of freedom from oppressive copyright fees. Amending the rules to redesignate the market as Atlanta-Rome would give such assurance to the cable systems.

Under all the circumstances, and examining the 1972 *Cable Television Report and Order*, 36 FCC 2d 143 (1976), cited in paragraph 6 of the *Notice of Proposed Rule Making*, one immediately sees that:

1. Rome and Atlanta are in the same state, are in the same television market, and are otherwise close enough geographically and market-wise to justify the redesignation of the market. The 56 geographic miles separating Rome and Atlanta is slightly less than the 57 miles which separated Orlando and Melbourne, Florida, which the

Commission rehyphenated in *Major Television Markets (Orlando-Daytona Beach-Melbourne-Cocoa)*, 57 RR 2d 685 (1985).

2. Cable carriage would be within the city-grade coverage of WTLK, and would not extend such cable carriage beyond the station's Grade B signal area. The truly unique characteristic of this proceeding is the strength of signal WTLK puts into Atlanta and the degree of overlap between WTLK and the Atlanta stations--much more than in either the Orlando or Fresno rehyphenation proceedings. See, Id., Major Television Markets (Fresno-Visalia, California), 57 RR 2d 1122 (1985).

3. There has been a strong showing of need for the change of market designation on the record developed already, and in a prior proceeding which the Commission cites in its *Notice of Proposed Rule Making*<sup>3</sup>

4. An indication of benefit to the public from the proposed change is most clear on the record developed to date. In most succinct form, allowing Channel 14 to gain access to the Atlanta cable systems will mean that an outstanding source of local programming will be available to the Atlanta market and this will be supplemented by a considerable schedule of CBS Television Network programming which is currently not carried by the affiliate in the Atlanta market. TV-14, Inc. is the only outlet for such programming in the Atlanta community because of its rejection by the regular affiliate in the market.

Under all the circumstances, we urge the Commission to finalize the rulemaking as promptly as possible so that TV 14, Inc. may

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<sup>3</sup> TV 14, Inc., 6 FCC Rcd 7235 (1991). TV 14, Inc. would note that no oppositions have been raised during the past several rounds of this process. See NPRM, ¶ 1 (no responsive pleadings received).

continue with the strong support of the Commission its efforts to bring to the public in Atlanta its outstanding programming.

Respectfully submitted,

**TV 14, INC.**

By Michael H. Bader  
Michael H. Bader

Its Attorneys

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